

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ROCHESTER DRUG CO-
OPERATIVE, INC., on behalf of
itself and all others similarly situated,

Plaintiff,
v.

ELI LILLY AND COMPANY, et al.

Defendants.

FWK HOLDINGS, LLC, individually
and on behalf of all others similarly
situated,

Plaintiff,
v.

NOVO NORDISK INC., et al.

Defendants.

VALUE DRUG COMPANY, on
behalf of itself and all others similarly
situated,

Plaintiff,
v.

ELI LILLY AND COMPANY, et al.

Defendants.

In re INSULIN PRICING
LITIGATION

No. 3:20-cv-03426-BRM-LHG

No. 3:20-cv-03480-BRM-LHG

No. 3:20-cv-05129-BRM-LHG

Case No. 3:17-00699

**DIRECT PURCHASER PLAINTIFFS ROCHESTER DRUG CO-
OPERATIVE, INC. AND VALUE DRUG COMPANY'S OPPOSITION TO
ONE ASPECT OF FWK'S MOTION TO CONSOLIDATE RELATED
CASES AND APPOINT INTERIM CO-LEAD CLASS COUNSEL AND
LIAISON COUNSEL FOR THE DIRECT PURCHASER ACTIONS AND
COORDINATE THE DIRECT AND INDIRECT PURCHASER ACTIONS**

Direct Purchaser Plaintiffs Rochester Drug Co-Operative, Inc. (“RDC”) and Value Drug Company (“Value”) respectfully oppose one aspect of FWK Holdings, LLC’s (“FWK”) Motion to Consolidate Related Cases, Appoint Interim Co-Lead Counsel and Liaison Counsel, and Coordinate the Direct and Indirect Purchaser actions (ECF No. 43). Specifically, RDC and Value oppose FWK’s request for the appointment of a multi-lawyer interim co-leadership structure for the Direct Purchaser actions comprised of three firms that are counsel on the FWK complaint to the exclusion of firms that are counsel in the RDC and Value complaints and without the designation of a lead counsel that would be directly accountable to the Court (ECF No. 43-8 at ¶ 6).

RDC and Value do not object to the appointment of Peter S. Pearlman of Cohn Lifland Pearlman Herrmann & Knopf LLP as Liaison Counsel for the Direct Purchaser actions.

As to FWK’s remaining requests, RDC and Value agree with FWK that all Direct Purchaser actions should be consolidated,¹ and do not oppose the request to coordinate the Direct Purchaser actions with the Indirect Purchaser Plaintiff action

¹ RDC and Value filed a Motion for Consolidation of all Direct Purchaser Cases and Appointment of Garwin Gerstein & Fisher LLP as Interim Lead Counsel on May 21, 2020. ECF No. 41.

(“IPPs”) to the extent such coordination is feasible.²

RDC and Value submit that it would be more efficient to have a single lead counsel with direct accountability to the Court than three separate law firms from only one of the three complaints without anyone specifically accountable. Although we recognize that it is not atypical to have more than one lead counsel, the leadership in those instances usually is composed of different counsel representing different plaintiffs, not multiple counsel all from one complaint representing one plaintiff to the exclusion of all other counsel. Critically, here, Garwin Gerstein & Fisher LLP (“GGF”) (by Bruce E. Gerstein) not only represents two of the three named plaintiffs, but is supported by six other putative class members, and has had numerous successes in pharmaceutical cases where GGF was sole lead or co-lead counsel on behalf of direct purchasers (*see* ECF No. 41-1 at 9-17). RDC and Value respectfully submit that sole leadership by GGF would be appropriate here.

Dated: June 1, 2020

Respectfully submitted,

² While RDC and Value do not oppose coordination with the IPPs, they respectfully submit that the issue need not be decided right now. As FWK correctly explains, the IPP and Direct Purchaser actions are at different litigation stages, and it would be unreasonable to ask the IPPs, who have already litigated this case for three years, to wait while the Direct Purchaser Plaintiffs catch up. RDC and Value propose that the Direct Purchaser Plaintiffs, IPPs, and Defendants be permitted time to discuss the feasibility of coordination following a decision on the Motions for Consolidation and Interim Lead Counsel for the Direct Purchaser actions.

ROCHESTER DRUG CO-OPERATIVE,
INC. and VALUE DRUG COMPANY

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